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10 Attorneys for Defendant
11 STATE BAR OF NEVADA

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 ADAM P. SEGAL, ESQ., an individual,

Case No. 2:13-cv-01511-JCM-NJK

15 Plaintiff,

16 v.

17 STATE BAR OF NEVADA, a Nevada public
18 corporation,

MOTION TO DISMISS

19 Defendant.

20 Defendant, STATE BAR OF NEVADA, by and through its counsel of record, Parsons
21 Behle & Latimer, hereby files this Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), based
22 on the *Younger* abstention doctrine. As set forth below, a pre-existing ongoing disciplinary
23 proceeding before the Southern Nevada Disciplinary Board, requires dismissal of this federal case
24 under the *Younger* abstention doctrine. In addition, this case should be dismissed pursuant to
25 Fed. R. Civ. P. 12(b)(1) because the State Bar of Nevada enjoys sovereign immunity against such
26 a lawsuit pursuant to the Eleventh Amendment of the United States Constitution.

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1 This Motion is based on the pleadings and papers filed herein, the Memorandum of Points
 2 and Authorities which follow, and upon such further evidence and argument of counsel as the
 3 Court may require or allow.

4 DATED this 12th day of September, 2013.

PARSONS BEHLE & LATIMER

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Rew R. Goodenow, Bar No. 3722

Robert W. DeLong, Bar No. 10022

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 8 *Attorneys for Defendant STATE BAR OF*
 9 *NEVADA*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 This Case should be dismissed for failure to state of claim upon which relief can be
 12 granted because Adam Segal, Esq. ("Segal") seeks declaratory relief in this action that would
 13 have the effect of prohibiting the Nevada State Bar from adjudicating an attorney discipline
 14 matter. The Nevada State Bar has filed a formal complaint against Segal alleging that he violated
 15 RPC 1.15 (Safekeeping property) and SCR 8.4 (Misconduct) when he knowingly released
 16 disputed funds to his client without any court authorization or further comment from opposing
 17 counsel, who was disputing the disposition of the funds. Although Segal has answered the
 18 complaint filed with the Southern Nevada Disciplinary Board, he is seeking to circumvent the
 19 disciplinary process by filing this action in Federal Court. If the requested declaratory relief in
 20 this action were granted, then the Nevada State Bar's disciplinary process regarding Segal would
 21 be enjoined by this Court. This tactic should be rejected because the State Bar of Nevada should
 22 be permitted to conduct and complete its disciplinary proceedings without federal court
 23 intervention, and because Segal will have a full and adequate opportunity to raise his federal
 24 preemption claims within the formal disciplinary proceedings, and within any appeal that may be
 25 taken therefrom.

26 In addition, this case should be dismissed for lack of subject matter jurisdiction because
 27 Segal's Complaint names only the State Bar of Nevada as a defendant. This fact alone bars the
 28

1 Complaint based on the State of Nevada's sovereign immunity, which is recognized and protected
2 by the Eleventh Amendment.

3 **I. STATEMENT OF RELEVANT FACTS**

4 The State Bar of Nevada is a public corporation created under Nevada's statutes, which is
5 operated under "the exclusive jurisdiction and control of the supreme court." NRS 7.275(1)
6 (2001). This grant of authority and jurisdiction is further defined by Nevada Supreme Court Rule
7 76, which states that "[t]he State Bar of Nevada, a public corporation heretofore created by
8 statute, shall govern the legal profession in this state, subject to the approval of the supreme
9 court." Pursuant to its authority to dispose of all matters involving alleged attorney misconduct
10 (SCR 104(1)), the State Bar of Nevada filed a formal complaint against Segal on August 2, 2013.
11 (Complaint Doc # 1, ¶ 37.) It is uncontested that this proceeding is ongoing and that Segal filed
12 an answer to the formal complaint on the same day that he filed this Complaint (Doc. # 1).

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14 **II. THIS COURT SHOULD REFRAIN FROM INTERVENING IN THE SOUTHERN**
15 **NEVADA DISCIPLINARY BOARD'S FORMAL PROCEEDING AND DISMISS**
16 **THE CASE BASED ON THE ABSTENTION DOCTRINE SET FORTH IN**
YOUNGER V. HARRIS.

17 The United States Supreme Court determined in *Younger v. Harris*, 401 U.S. 37 (1971),
18 that "declaratory relief is . . . improper when a prosecution involving the challenged statute is
19 pending in state court at the time the federal suit is initiated." This doctrine of abstention was
20 later extended to ongoing state judicial proceedings, which include attorney discipline
21 proceedings. *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 431
22 (1982). It is now well settled that a district court must abstain and dismiss a suit on the basis of
23 the *Younger* doctrine where: (1) state proceedings are ongoing; (2) important state interests are
24 involved; and (3) the plaintiff has an adequate opportunity to litigate federal claims in the state
25 proceedings. See Id. at 432.

26 In this case all of the elements of the doctrine are present because (1) formal disciplinary
27 proceedings are ongoing against Segal, (2) Nevada attorney disciplinary proceedings implicate
28 important state interests, and (3) Segal has an adequate opportunity to litigate federal claims

1 within the formal disciplinary proceeding, just as other litigants have done in the past. Because
 2 this case seeks declaratory relief that would effectively enjoin the ongoing proceedings before the
 3 Southern Nevada Disciplinary Board, dismissal is appropriate. *See Gilbertson v. Albright*, 381
 4 F.3d 965, 981 (9th Cir. 2004). Furthermore, the policies articulated in the *Younger* decision
 5 support abstention because Segal seeks declaratory relief in this action that would have the effect
 6 of prohibiting the Nevada State Bar from pursuing an attorney discipline matter.

7 **A. Formal Disciplinary Proceedings by the Nevada Southern Disciplinary Board**
 8 **are Ongoing Against Segal.**

9 The disciplinary process for Nevada attorneys is set forth in Nevada Supreme Court Rule
 10 105(2), which states in pertinent part:

11 Commencement of formal proceedings. Formal disciplinary
 12 proceedings are commenced by bar counsel filing a written
 13 complaint in the name of the state bar. The complaint shall be
 14 sufficiently clear and specific to inform the attorney of the charges
 against him or her and the underlying conduct supporting the
 charges.

15 In this instance, it is clear that a formal proceeding has been commenced against Segal,
 16 which is ongoing before the State Bar of Nevada Southern Nevada Disciplinary Board. The
 17 Complaint (Doc. # 1) filed by Segal in this matter acknowledges that a “formal complaint” was
 18 “issued” against him by the Nevada State Bar at paragraph 37. Moreover, the Complaint (Doc. #
 19 1) acknowledges at paragraph 38 that the State Bar proceedings concern the application of
 20 Nevada Rule of Professional Conduct 1.15 to his actions as described in the Complaint.
 21 Accordingly, the first element of the abstention doctrine has been met.

22 **B. Nevada Attorney Disciplinary Proceedings Implicate Important State**
 23 **Interests.**

24 The Court in *Middlesex* concluded that a state “has an extremely important interest in
 25 maintaining and assuring the professional conduct of the attorneys it licenses.” *Middlesex County*
 26 *Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 434 (1982); *see also Rosenthal v. Carr*,
 27 614 F.2d 1219, 1220 (9th Cir.1980) (recognizing that the “abstention doctrine generally precludes
 28 federal court interference with pending state attorney disciplinary proceedings”). This case

1 clearly implicates the Nevada Bar's important interest in interpreting and enforcing Nevada Rule
 2 of Professional Conduct 1.15, and the oversight of the attorneys it licenses. Accordingly, the
 3 second element of the abstention doctrine has been met.

4 C. **Segal Has an Adequate Opportunity to Litigate Federal Claims Within the**
 5 **Formal Disciplinary Proceeding, Just as Other Litigants Have Done in the**
 6 **Past.**

7 The disciplinary proceedings against Segal are clearly judicial in nature because the
 8 Southern Nevada Disciplinary Board is under the exclusive jurisdiction and control of the
 9 Supreme Court. NRS 7.275 and SCR 76. More importantly, the Supreme Court rules governing
 10 discipline allow Segal the opportunity to present constitutional claims, just as other respondents
 11 have asserted in prior cases. *See, i.e. In re Discipline of Schaefer*, 117 Nev. 496, 25 P.3d 191, as
 12 *mod.* 31 P.3d 365 (2001) (the Court determined that the Frist Amendment rule of void for
 13 vagueness applied in the case and overturned a finding of misconduct). In addition, the United
 14 States Supreme Court has stated that “[m]inimal respect for the state processes, of course,
 15 precludes any presumption that the state courts will not safeguard federal constitutional rights.”
 16 *Middlesex County*, 457 U.S. at 431.

17 In addition to the Nevada Supreme Court's ability to review determinations made by the
 18 State Bar Disciplinary Board, the Court may issue writs of mandamus, writs of prohibition, and
 19 “all writs necessary or proper to the complete exercise of its appellate jurisdiction.” Nev. Const.,
 20 Art. 6, § 4. In prior cases, the Court has permitted subjects of judicial disciplinary proceedings to
 21 seek extraordinary writs to cut off disciplinary proceedings. *See Mosley v. Nev. Comm'n on*
 22 *Judicial Discipline*, 22 P.3d 655 (Nev. 2001) (considering writ petition seeking interlocutory
 23 review of disciplinary proceedings); *see also Whitehead v. Nev. Comm'n on Judicial Discipline*,
 24 906 P.2d 230, 244 (Nev. 1994) (considering writ petition seeking review of disciplinary
 25 commission's acts prior to a final decision). The availability of a writ proceeding before the
 26 Nevada Supreme Court provides yet another avenue for an attorney to raise his constitutional
 27 claims in the state court proceedings. Accordingly, the second element of the abstention doctrine
 28 has been met.

1 Based on the fact that all of the elements for *Younger* abstention have been met, and the
 2 relief sought by Segal in this action that would have the effect of prohibiting the Nevada State Bar
 3 from pursuing to completion an attorney discipline matter, this Court should dismiss Segal's
 4 Complaint.

5 **III. THIS COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER**
 6 **THE STATE BAR OF NEVADA BASED ON THE STATE'S SOVERIGN**
 7 **IMMUNITY, WHICH IS RECOGNIZED AND PROTECTED BY THE**
 8 **ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

9 This case should be dismissed based on lack of subject matter jurisdiction because the
 10 State Bar is immune from such lawsuits. The Eleventh Amendment to the United States
 11 Constitution provides that "[t]he Judicial power of the United States shall not be construed to
 12 extend to any suit in law or equity, commenced or prosecuted against one of the United States by
 13 Citizens of another State, or by Citizens or Subjects of any Foreign State." This has been
 14 construed to extend to a lawsuit brought in Federal Court by a state's own citizen. "A state is
 15 immune from federal court suits brought by its own citizens, even though the case arises under
 16 the Constitution or laws of the United States." *Louis v. Supreme Court of Nevada*, 490 F. Supp.
 17 1174, 1180 (D. Nev. 1980). More importantly, it has been determined that "[t]he Supreme Court
 18 of Nevada is an agency of the State of Nevada and immune from suit under the Eleventh
 19 Amendment to the U. S. Constitution." *Id.* (citation omitted). Absent a waiver, a state itself or an
 20 "arm" thereof is not subject to a suit for declaratory relief in light of the Eleventh Amendment's
 21 express bar against such lawsuits. As the State of Nevada has never expressly waived its
 22 sovereign immunity for actions such as this one, the State Bar of Nevada respectfully invokes its
 23 Eleventh Amendment immunity as an express jurisdictional bar to Segal's lawsuit. Accordingly,
 24 this Court should dismiss the case for lack of subject matter jurisdiction.

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1 **IV. CONCLUSION.**

2 Based on the foregoing, the State Bar of Nevada respectfully requests that this
3 Court dismiss this action because the *Younger* abstention doctrine applies and because the State
4 has not waived its sovereign immunity with respect to such a lawsuit.
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6 DATED this 12th day of September, 2013. PARSONS BEHLE & LATIMER

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8 Rew R. Goodenow, Bar No. 3722
9 Robert W. DeLong, Bar No. 10022

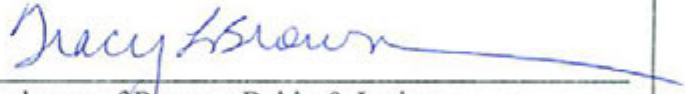
10 *Attorneys for Defendant STATE BAR OF*
11 *NEVADA*
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of Parsons Behle & Latimer, and that on this 12th day of September, 2013, I filed a true and correct copy of the foregoing MOTION TO DISMISS with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to the following:

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